

1 **M**INUTES OF THE VERNAL CITY COUNCIL REGULAR MEETING HELD
2 MARCH 20, 2013 at 7:00 p.m. in the Vernal City Council room, 374 East Main,
3 Vernal, Utah 84078.
4

5 **PRESENT:** Councilmembers Ted Munford, JoAnn Cowan, Dave Everett, Sonja Norton and Bert
6 Clark, and Mayor Gary Showalter.

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8 **WELCOME:** Mayor Showalter welcomed everyone to the meeting.

9
10 **INVOCATION OR UPLIFTING THOUGHT:** An uplifting thought was given by
11 Councilmember JoAnn Cowan.

12
13 **PLEDGE OF ALLEGIANCE:** The Pledge of Allegiance was led by Councilmember Sonja
14 Norton.

15
16 **APPROVAL OF CITY COUNCIL MINUTES OF MARCH 6, 2013:** *Councilmember Bert*
17 *Clark noted that he gave his corrections to the Deputy Recorder before the meeting.*
18 *Councilmember JoAnn Cowan moved to approve the minutes of March 6, 2013 with the*
19 *corrections. Councilmember Bert Clark seconded the motion. The motion passed with*
20 *Councilmembers Munford, Cowan, Everett, Norton and Clark voting in favor.*

21
22 **PUBLIC HEARING: PUBLIC INPUT FOR HAVEN ESTATES PUBLIC**
23 **IMPROVEMENTS REIMBURSEMENT TO THE CITY:** Mayor Gary Showalter explained
24 that this public hearing has been scheduled to give property owners the opportunity to make
25 comments on the reimbursement to the City for improvements contiguous with their property in
26 Haven Estates subdivision. Ken Bassett agreed, stating that this subdivision is west of 500 West
27 along 700 and 800 South. The Council is aware of the improvements that the City has completed,
28 including the roadway, curb, gutter and sidewalk. A spreadsheet was presented to the Council,
29 outlining the total cost and revenues applied to this project. In accordance with City ordinance,
30 any property owner who potentially could be required to reimburse the City their proportionate
31 share of the improvements had been notified of this hearing. There are a total of sixty-six
32 properties involved. The total cost to the City was \$318,726. The affected property owners
33 were notified of the hearing and proper notification was placed in the local newspaper. Ken
34 stated that one written comment was received from the property owner of lot 120, Dianne
35 Thompson, which is shown as Pennington 6 LLC on the County property records. The concern
36 stated in her letter is the amount of money she may be potentially required to pay. Mike Davis,
37 finance director, noted that Deer Canyon was a contractor on this subdivision, and when the City
38 took over the escrow account, Deer Canyon hired by Harbor Capital, received the funds from the
39 first draw down on that account. The amount in the escrow account was \$1.2 million dollars.
40 Councilmember Cowan clarified that the City used the remaining money from the escrow
41 account to finish the public improvements and then had to use an additional \$318,726 of City
42 money to finish it. Ken Bassett agreed that after funds were paid to the developer for
43 improvements that he legitimately made and after the City finished the public improvements, the
44 amount owed to the City is \$318,726.07. Councilmember Cowan asked what the obligation is
45 of Harbor Capital to cover this cost. Mr. Dennis Judd, legal counsel for Vernal City, explained
46 that there are three parties that entered into a contract with Vernal City several years ago to finish

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47 installing the improvements. Two of those businesses filed bankruptcy after litigation to
48 enforce that contract. Litigation is still on-going with Harbor Capital who also signed the
49 contract. Councilmember JoAnn Cowan asked if the City were to get money from Harbor
50 Capital out of that litigation, would it reduce the amount owed by the property owners on this
51 reimbursement notice. Dennis Judd answered that the ordinance does provide for that event,
52 and the amount owned would be reduced. If the fee has already been paid, then the City would
53 reimburse the property owner. Ryan Relyea, representing HRAF Holdings, informed the Council
54 that Harbor Capital is not the parent capital entity, but rather is the sole holder of the lots in the
55 Haven Estates development. Harbor Capital was a lender on this project, and invested \$4.7
56 million dollars. The developer which the City has an agreement with to finish the project,
57 skipped town, forcing Harbor Capital to foreclose. Mr. Relyea listed the following concerns
58 regarding the reimbursement of the public improvements in Haven Estates which he requested
59 by placed on record as follows:
60

- 61 1. It is not known which contractor was used or what process was taken to make sure the
62 best price was received for the work that was done by the City. Also, sufficient
63 information has not been provided on what was installed and if the costs were reasonable.
- 64 2. Harbor Capital owns the lion share of the lots, around 98 lots. Who decided which
65 properties would receive the improvements, and what properties benefited from the
66 expenditures.
- 67 3. It is Harbor Capitals position that the City is not authorized by law to charge this
68 reimbursement fee.
- 69 4. The City did not provide notice they were contemplating doing this project, nor were
70 property owners able to comment on that action before it was done.
- 71 5. Haven Estates is a 120 lot subdivision with 66 lots that are mostly improved with another
72 114 that are unimproved or have subgrade improvements.
73

74 Mr. Relyea stated that he did not understand why the City funds and bond (escrow) money were
75 used to put improvements in front of the lots that had homes constructed, and found it interesting
76 that those lots were the first to be improved while other lots in the subdivision did not receive
77 improvements. He voiced his opinion that the City engineer's original estimate for the escrow
78 and bond amount was not correct, leaving the project infrastructure improvements underfunded
79 by 70%. He stated that this proposal for reimbursement is premature and should be rejected or
80 HRAF would consider legal action. Councilmember JoAnn Cowan asked who left after investing
81 such a large sum of money. Ryan Relyea explained that the initial borrowers included D & M
82 Development, and the Elva Group. The excavation of the lots was subcontracted out.
83

84 Councilmember Cowan chastised Mr. Relyea stated that his comments were offensive and felt he
85 was trying to blame the City for this financial mess. Mr. Relyea apologized and stated that they
86 felt the reimbursement was simply not supported by law. He stated that in his opinion the City
87 did contribute to the negligence of this project with misguided or erroneous engineer's estimates
88 of the infrastructure costs.
89

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90 Councilmember Cowan again voiced her displeasure and explained that the City is obligated by
91 law to bid projects such as this one out and pick the best contractor at the best price possible. She
92 found it amazing that Harbor Capital would even imply that the City is the “bad guy” on this
93 project. Councilmember Clark asked Mr. Relyea how long he had been representing Harbor
94 Capital. Mr. Relyea answered since 1998 and stated that he spent years in negotiations with the
95 City and homeowners involved in this project. He apologized for calling the integrity of the City
96 into question. Councilmember Munford asked if Harbor Capital had been given the opportunity
97 would they have done the project cheaper or faster. Ryan Relyea stated that their assets are being
98 unwound and they could not finish the project. Mayor Showalter asked if Harbor Capital plans
99 on completing this project after they finish Chapter 11 bankruptcy. Mr. Relyea responded that he
100 did not know what would happen. Mayor Showalter stated he had tried to correspond with
101 Harbor Capital and was not able to and asked if they were still located in Midvale. Ryan
102 Relyea stated that they have offices in a historical building in Midvale on Main Street and the
103 building does not have exterior signage on it. Mayor Showalter asked how HRAF and Harbor
104 Capital were entwined. Mr. Relyea stated that HRAF holdings were formed as a holding
105 company for the real property, and the other partners were lenders. Dennis Judd stated that the
106 question is, under the City ordinance, does the Council want to precede with the recommended
107 cost allocated to the properties. The ordinance provides that as property owners desire to use or
108 take advantage of the improvements made by the City, they must reimburse their share of the
109 cost. The code also provides an appeal process. Also, Mr. Judd pointed out that there are no
110 private utilities so property owners would not be able to receive certificates of occupancy yet.
111 Mayor Showalter stated that he was not comfortable with the Council making a decision tonight,
112 but rather take time to review all the information being presented. Dennis Judd agreed there was
113 no urgency. There was some discussion regarding the engineers estimate for this project and why
114 a City engineer is involved. Councilmember Cowan asked Mr. Relyea to forward any
115 information he had regarding the engineers estimate to the staff and Council for review. Ryan
116 Relyea stated that they would like to see this issue resolved and again stated that the bond was
117 underfunded. Mayor Showalter suggested Mr. Relyea get with the staff to obtain the
118 information he is requesting as well as provide information for the Council. There being no
119 further comments, the public hearing was closed.

120
121 *Councilmember Bert Clark moved to table the reimbursement plan for two weeks and continue*
122 *the discussion at the next meeting.* Mayor Showalter noted that the staff and Council may need
123 more time to review any information given to them by Mr. Relyea. *Councilmember Bert Clark*
124 *amended his motion to table the reimbursement plan for up to six weeks.* *Councilmember Ted*
125 *Munford seconded the motion. The motion passed with the following roll call vote:*

126 *Councilmember Ted Munford.....aye;*
127 *Councilmember JoAnn Cowanaye;*
128 *Councilmember Dave Everett.....aye;*
129 *Councilmember Sonja Norton.....aye;*
130 *Councilmember Bert Clark..... aye.*

131
132

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133 **PUBLIC HEARING: REQUEST FOR APPROVAL TO AMEND THE VERNAL CITY**
134 **MUNICIPAL CODE, PLANNING AND ZONING CODE – SECTIONS 16.04.027,**
135 **16.04.052, 16.20.505, AND 16.48.030 – ADDING BAKERIES AND PET GROOMING**
136 **PARLORS - ORDINANCE NO. 2013-03:** Mayor Showalter opened the public hearing to
137 discuss Ordinance No. 2013-03. Allen Parker explained that this ordinance takes three different
138 types of businesses that could be located in the City and places them in the use tables for the
139 commercial zones and industrial zone. The ordinance also adds the definition of a bakery. Pet
140 grooming parlors and bakeries have been added as permitted uses in the commercial zones, and
141 kennels have been added as conditional uses in the industrial zone. The reason for the conditional
142 use is to mitigate any problems it may cause to adjoining properties. Councilmember Clark
143 verified that the use goes with the property, not the ownership of the business. Allen Parker
144 stated that it does run with the property as outlined by State code. Councilmember Clark asked
145 what would govern the pet grooming parlors so they do not spread diseases and address where
146 the animals will go to the bathroom. Ken Bassett stated that he was not aware of the Health
147 Department overseeing animal businesses. He stated he would look into it. Dennis Judd stated
148 he spent time with the Animal Services District and the County as they presented new provisions
149 for the City to consider that would address some of these issues. He suggested the animal
150 issues be addressed through that ordinance. There being no further public comments, the public
151 hearing was closed. *Councilmember Dave Everett moved to approve Ordinance No. 2013-03.*
152 *Councilmember Ted Munford seconded the motion. The motion passed with the following roll*
153 *call vote:*

- 154 *Councilmember Ted Munford.....aye;*
- 155 *Councilmember JoAnn Cowanaye;*
- 156 *Councilmember Dave Everett.....aye;*
- 157 *Councilmember Sonja Norton.....aye;*
- 158 *Councilmember Bert Clark.....nay.*

159
160 **INTRODUCTION OF NEW EQUIPMENT OPERATOR, JORDAN WALKER:** Russel
161 Augustus introduced a new equipment operator, Jordan Walker, to the Council. Mr. Walker
162 stated that he moved here from Fountain Green where his father owned a plumbing company,
163 and he was able to use heavy equipment since he was young. The Mayor and Council
164 welcomed Jordan Walker to the City.

165
166 **REQUEST FOR APPROVAL OF AMENDMENT TO THE VERNAL CITY POLICE**
167 **DEPARTMENT PROCEDURES FOR HOLDING FACILITY – RESOLUTION NO.**
168 **2013-07:** Chief Dylan Rooks reminded the Council that this draft Resolution was presented at
169 the last meeting and needed to be reviewed by the staff before being adopted. The staff has had
170 the opportunity to make any necessary corrections. The Resolution outlines the policy for the
171 use of the temporary holding facility located in City Hall which includes the sally port, holding
172 cells and bathrooms. The transport officer will remain in that area so the bailiff can monitor
173 what is happening in the court room. Councilmember Clark asked if a supervisor would be
174 accessible at all times as required in Section 9.00.091. Chief Rooks answered yes that the day
175 shift Sergeant would address any security issues. Mayor Showalter asked the Chief to consider

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176 holding a ribbon cutting for the use of the holding cells. After further discussion,
177 *Councilmember JoAnn Cowan moved to adopt Resolution No. 2013-07. Councilmember Bert*
178 *Clark seconded the motion. The motion passed with the following roll call vote:*

- 179 *Councilmember Ted Munford.....aye;*
- 180 *Councilmember JoAnn Cowanaye;*
- 181 *Councilmember Dave Everett.....aye;*
- 182 *Councilmember Sonja Norton.....aye;*
- 183 *Councilmember Bert Clark..... aye.*

184
185 **REQUEST FOR APPROVAL OF A MINOR SUBDIVISION FROM NDS, LLC FOR**
186 **PROPERTY LOCATED AT 1495 WEST HIGHWAY 40, VERNAL, UTAH:** Allen Parker
187 explained that NDS, LLC is requesting the City approve the split of a parcel of land from one
188 parcel into 2 parcels. The property includes the area where Aaron’s Furniture is located, and the
189 property owner wants to place a small sporting goods store on the other parcel. The division of the
190 property does meet City code and is being forwarded from the Planning Commission with a
191 positive recommendation. Councilmember Clark asked if the parking and storm water would be
192 common areas for both businesses. Allen Parker stated yes and explained that a legal document
193 will be recorded making it mandatory that each business be allowed to use those improvements.
194 Mayor Showalter asked if there would be enough parking. Allen Parker stated that the plat does
195 meet the parking requirements of the City. *Councilmember JoAnn Cowan moved to approve the*
196 *NCS, LLC subdivision as presented. Councilmember Sonja Norton seconded the motion. The*
197 *motion passed with the following roll call vote:*

- 198 *Councilmember Ted Munford.....aye;*
- 199 *Councilmember JoAnn Cowanaye;*
- 200 *Councilmember Dave Everett.....aye;*
- 201 *Councilmember Sonja Norton.....aye;*
- 202 *Councilmember Bert Clark..... aye.*

203
204 **REQUEST FOR APPROVAL OF CIB GRANT FOR SOUTH VERNAL AVENUE**
205 **WATER PROJECT:** Ken Bassett reminded the Council that the City applied to the Community
206 Impact Board for funding to replace the water line along south Vernal Avenue. The total cost of
207 the project is estimated to be \$425,000, and the City requested half grant and half loan. The City
208 does not usually receive any grant funding for water projects. For this project, however, the
209 Community Impact Board approved half grant with Vernal City funding the remainder of the
210 project. This type of funding was not expected, and the CIB Board was split on granting it. It
211 is necessary for the Council to authorize the Mayor to sign the grant contract with the CIB for
212 this funding. *Councilmember Ted Munford moved to authorize the Mayor to sign the grant*
213 *contract with the Community Impact Board for the south Vernal Avenue waterline project.*
214 *Councilmember Dave Everett seconded the motion. The motion passed with the following roll*
215 *call vote:*

- 216 *Councilmember Ted Munford.....aye;*
- 217 *Councilmember JoAnn Cowanaye;*
- 218 *Councilmember Dave Everett.....aye;*

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219 *Councilmember Sonja Norton.....aye;*
220 *Councilmember Bert Clark..... aye.*

221
222 **REQUEST FOR APPROVAL OF CONTRACT FOR LEGAL SERVICES FOR THE**
223 **AIRPORT:** Ken Bassett explained that Uintah County forwarded a contract to the City for legal
224 services dealing with the airport expansion. The County is managing that project which also
225 includes land acquisition to extend the runway. The legal counsel serves as the County’s
226 representative dealing with property owners involved. The majority of the cost will be paid by
227 the FAA. Councilmember Norton noticed that the City was not included as a party to the
228 contract. Ken Bassett stated he would get that corrected. *Councilmember Bert Clark moved*
229 *to approve the contract for legal services for the airport with the addition of showing the City as*
230 *a party to the contract. Councilmember Sonja Norton seconded the motion. The motion*
231 *passed with Councilmembers Clark, Norton, Cowan, Everett and Munford voting in favor.*
232

233 **STAFF REPORTS:**

234
235 Joint City / County Meeting:

236 Ken Bassett reminded the Council there would be a joint City / County meeting on March 25th at
237 3 pm here at the City offices.

238
239 Budget workshops:

240 Ken Bassett asked the Council to look at their scheduled for the week of March 25th - 28th and
241 schedule Council Committee meetings to go over the FY2013 budget. The meetings were
242 scheduled as follows:

243 Administrative Committee: Wednesday, March 27th at 10 am

244 Public Safety Committee: Tuesday, March 26th at 2 pm

245 Public Works Committee: Wednesday, March 27th at 3 pm

246
247 **ADJOURN:** There being no further business, Councilmember Bert Clark moved to adjourn.
248 Councilmember Ted Munford seconded the motion. The motion passed with a unanimous vote
249 and the meeting was declared adjourned.

250
251
252 _____
253 Mayor Gary Showalter

254 ATTEST:
255 _____
Roxanne Behunin, Deputy Recorder

(S E A L)